

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 6679

BILL NUMBER: SB 220

NOTE PREPARED: Dec 29, 2007

BILL AMENDED:

SUBJECT: Employment of Unauthorized Aliens.

FIRST AUTHOR: Sen. Simpson

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill prohibits a contractor that enters into a public contract for services from knowingly employing an unauthorized alien.

The bill requires the Attorney General to: (1) investigate a complaint that a contractor knowingly employed an unauthorized alien; (2) verify the work authorization of the alleged unauthorized alien with the federal government; (3) notify United States Immigration and Customs Enforcement, local law enforcement agencies, and the appropriate prosecuting attorney of a determination that a contractor has employed an illegal alien; and (4) maintain certain records of violation orders.

The bill also provides that a prosecuting attorney notified of the Attorney General's determination that a contractor, after December 31, 2008, employed an unauthorized alien is required to file an action against the contractor. It requires a court to: (1) hold a hearing and make a determination of the action on an expedited basis; (2) if the contractor knowingly employs an unauthorized alien, order the contractor to terminate the employment of the unauthorized alien, order the contractor to file a signed affidavit, and place the contractor on probation for three years; (3) order agencies to suspend all licenses held by the contractor for the operation of the business location if the contractor fails to file the sworn affidavit; (4) for a second violation during the probationary period, order agencies to revoke all licenses held by the contractor for the operation of the business location; and (5) send copies of orders to the Attorney General. This bill also provides that a court: (1) may suspend a contractor's licenses if the contractor knowingly employs an unauthorized alien; and (2) may consider only the federal government's verification or status information in determining whether an individual is an unauthorized alien.

The bill establishes: (1) a rebuttable presumption that a contractor did not knowingly employ an unauthorized alien if the contractor verified the employment authorization of an individual through the federal pilot

program; and (2) an affirmative defense if the contractor complied in good faith with the federal employment verification requirements. The bill also provides that a public contract for services is void if the contractor providing the services hires or employs unauthorized aliens unless the state or political subdivision determines that voiding the contract would be detrimental to the public interest or public property. The bill makes it a Class C misdemeanor to knowingly file a false or frivolous allegation with the Attorney General.

Effective Date: January 1, 2009.

Explanation of State Expenditures: Under the legislation, a contractor is banned from knowingly employing an unauthorized alien. If a complaint is filed with the Attorney General that a contractor knowingly employed an unauthorized alien, it is the responsibility of the Attorney General to investigate the complaint. The Attorney General is required to verify the work authorization of any alleged unauthorized aliens with use of the E-Verify employment verification pilot program offered by the U.S. Department of Homeland Security or its successor program. The E-Verify program is currently free for use provided an account is registered online and the responsibilities outlined in the user agreement are accepted.

The legislation requires that if an unauthorized alien is determined to have been employed by the investigated employer, the Attorney General is required to notify the U.S. Immigration and Customs Enforcement, local law enforcement agencies, and the prosecuting attorney in the county in which the unauthorized alien was employed.

If a contractor is found to have violated the provisions in this legislation, they will be placed on a three-year probation during which they must file a quarterly report with the Attorney General for each new individual the employer hires at the place of business where the unauthorized alien worked. Additionally, employers must file a sworn affidavit that states the unauthorized alien has been terminated and will not knowingly employ subsequent unauthorized aliens. Failure to file this affidavit will result in either the suspension or revocation of an employer's business license.

The Attorney General is also required to maintain copies of business license revocation or suspension orders, establish and maintain a database of the names and addresses of the employers that have a violation under the provisions of this bill, and make orders available on the Attorney General's website.

These requirements will increase the workload of the Office of the Attorney General. The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

The legislation also provides that if a contractor is found to have knowingly employed an unauthorized alien, any contract for services is void, unless voiding the contract is not in the public's best interest. This provision can increase the workload of the Department of Administration and other contract-granting political subdivisions to the extent that contracts are voided due to contractor misconduct.

Explanation of State Revenues: *Penalty Provision:* A person that files a false or frivolous complaint about the employment of unauthorized aliens with the Attorney General commits a Class C misdemeanor. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines)

and the state General Fund (from court fees) would increase. The maximum fine for a Class C misdemeanor is \$500. However, any additional revenue would likely be small.

Explanation of Local Expenditures: If a prosecuting attorney receives notification from the Attorney General of an employed unauthorized alien, the prosecuting attorney is required to file an action against the employer. The legislation provides that if an action is filed only one action can be filed against an employer for all employed unauthorized aliens at the time the action is filed. Additional actions can be filed for subsequent violations of provisions contained in the bill. When this action is filed, the court where the action is filed will have jurisdiction to hold a hearing and make a determination in the matter. Additionally, courts are required to send copies of all business license revocation or suspension orders to the Attorney General. These provisions will increase the workload of prosecuting attorneys as well as local courts.

Penalty Provision: A Class C misdemeanor is punishable by up to 60 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: Office of the Attorney General, Department of Administration.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: U.S. Immigration and Customs Enforcement; U.S. Department of Homeland Security; Matt Light, Office of the Attorney General.

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